

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Pat. # 5,636,719

Horton, Inc.,

Plaintiff,

v.

Kit Masters Inc.,

Defendant.

Civil Action No. _____

**COMPLAINT FOR
PATENT INFRINGEMENT**

(JURY TRIAL DEMANDED)

Plaintiff, Horton, Inc. ("Horton"), for its complaint against Defendant, Kit Masters Inc. ("Kit Masters"), alleges as follows:

THE PARTIES

1. Plaintiff Horton is a domestic corporation organized under the laws of the state of Minnesota having a principal place of business at 2565 Walnut Street, Roseville, MN 55113.

2. Upon information and belief, Defendant Kit Masters is a corporation organized under the laws of the state of Minnesota having a principal place of business at 825 1st Street NE, Perham, MN 56573.

JURISDICTION AND VENUE

3. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. §1 *et seq.*, and particularly 35 U.S.C. §271.

4. This court has subject matter jurisdiction under 28 U.S.C. §§1331 and 1338(a).

5. Upon information and belief, defendant Kit Masters transacts and has transacted business throughout the United States, and has committed tortious acts within the State of Minnesota, causing injury to Horton in the State of Minnesota, thereby establishing sufficient minimum contacts. This Court has personal jurisdiction over Kit Masters by reason of its presence within the State of Minnesota as well as by reason of committing acts of infringement, inducement to infringe and/or contributory infringement within the State of Minnesota and this judicial district.

6. Venue in the United States District Court for the District of Minnesota is proper pursuant to 28 U.S.C. §§1391(c) and 1400(b) because Kit Masters is a corporation over which the Court has personal jurisdiction, and because Kit Masters has an established place of business in that judicial district.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 5,636,719

7. Horton incorporates and re-alleges paragraphs 1 through 6.

8. On June 10, 1997, U.S. Patent No. 5,636,719 entitled "Rotational Control Apparatus" ("the '719 patent") was duly and legally issued to assignee Horton. A true and correct copy of the '719 patent is attached as Exhibit A to the Complaint.

9. Horton is the owner by assignment of the entire right, title, and interest in and to the '719 patent with the right to sue for past, present, and future infringement of the '719 patent.

10. Upon information and belief, Kit Masters has been and is making, using, selling, offering for sale, and/or importing, without license or authority from Horton, in this district and elsewhere in the United States, clutch components that embody the invention(s) claimed in the '719 patent, and has been and is infringing the '719 patent under 35 U.S.C. §271.

11. Attached as Exhibit B is a true and correct copy of a Kit Masters promotional flyer entitled "Kit Masters 2-Speed Conversion Kits" distributed in 2008 that depicts at least one clutch product that infringes the '719 patent.

12. Upon information and belief, Kit Masters will continue to directly infringe, contributorily infringe, and/or induce infringement of the '719 patent unless enjoined by the Court.

13. Upon information and belief, Horton has been damaged by Kit Masters' infringement of the '719 patent, and will continue to be damaged by that infringement unless enjoined by this court.

14. Upon information and belief, Kit Masters has actual knowledge of the full contents of the '719 patent, and its prior and continuing infringement of the '719 patent was and is willful and deliberate.

PRAYER FOR RELIEF


WHEREFORE, Plaintiff, Horton, prays for the following relief:

- a. That Kit Masters, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be found to have infringed the valid U.S. Patent No. 5,636,719, and be enjoined, preliminarily and permanently, from making, using, selling, offering for sale or importing into the United States products and components which infringe U.S. Patent No. 5,636,719;
- b. That Horton be compensated by Kit Masters for the damages caused by Kit Masters' infringement of U.S. Patent No. 5,636,719 under 35 U.S.C. §284, in an amount to be determined by an accounting, but not less than a reasonable royalty, plus interest;
- c. That the award of damages for infringement of U.S. Patent No. 5,636,719 be trebled as provided for by 35 U.S.C. §284 for willful infringement by Kit Masters;
- d. That Horton be awarded its costs and attorneys' fees incurred in prosecuting this exceptional case, as provided for by 35 U.S.C. §285, plus interest; and
- e. That Horton be awarded such other relief as the Court deems just and proper.

JURY DEMAND

Horton demands a jury trial on all issues so triable.

Dated: 4/20/09

By: 
David R. Fairbairn (28,125)
Alan M. Koenck (268,926)
Austen P. Zuege (330,267)
KINNEY & LANGE, P.A.
The Kinney & Lange Building
312 South Third Street
Minneapolis, MN 55415-1002
(612) 339-1863

**ATTORNEYS FOR PLAINTIFF
HORTON, INC.**

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Horton, Inc.

DEFENDANTS

Kit Masters Inc.

(b) County of Residence of First Listed Plaintiff Ramsey
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Otter Tail
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

David Fairbairn, Alan Koenck, Austen Zuege, Kinney & Lange,
P.A., 312 So. 3rd St., Minneapolis, MN 55415, 612-339-1863

Attorneys (If Known)

Michael Florey, Geoff Biegler, Fish & Richardson P.C., 60 So.
6th St., Suite 3200, Minneapolis, MN 55402, 612-335-5070

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | |
|--|--|---|--|---|
| CONTRACTS
<input type="checkbox"/> 110 Insurance
<input type="checkbox"/> 120 Marine
<input type="checkbox"/> 130 Miller Act
<input type="checkbox"/> 140 Negotiable Instrument
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment
<input type="checkbox"/> 151 Medicare Act
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits
<input type="checkbox"/> 160 Stockholders' Suits
<input type="checkbox"/> 190 Other Contract
<input type="checkbox"/> 195 Contract Product Liability
<input type="checkbox"/> 196 Franchise | TORTS
PERSONAL INJURY
<input type="checkbox"/> 310 Airplane
<input type="checkbox"/> 315 Airplane Product Liability
<input type="checkbox"/> 320 Assault, Libel & Slander
<input type="checkbox"/> 330 Federal Employers' Liability
<input type="checkbox"/> 340 Marine
<input type="checkbox"/> 345 Marine Product Liability
<input type="checkbox"/> 350 Motor Vehicle
<input type="checkbox"/> 355 Motor Vehicle Product Liability
<input type="checkbox"/> 360 Other Personal Injury
PERSONAL INJURY
<input type="checkbox"/> 362 Personal Injury - Med. Malpractice
<input type="checkbox"/> 365 Personal Injury - Product Liability
<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
<input type="checkbox"/> 370 Other Fraud
<input type="checkbox"/> 371 Truth in Lending
<input type="checkbox"/> 380 Other Personal Property Damage
<input type="checkbox"/> 385 Property Damage Product Liability | FORFEITURE/PENALTY
<input type="checkbox"/> 610 Agriculture
<input type="checkbox"/> 620 Other Food & Drug
<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881
<input type="checkbox"/> 630 Liquor Laws
<input type="checkbox"/> 640 R.R. & Truck
<input type="checkbox"/> 650 Airline Regs.
<input type="checkbox"/> 660 Occupational Safety/Health
<input type="checkbox"/> 690 Other
LABOR
<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
IMMIGRATION
<input type="checkbox"/> 462 Naturalization Application
<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee
<input type="checkbox"/> 465 Other Immigration Actions | BANKRUPTCY
<input type="checkbox"/> 422 Appeal 28 USC 158
<input type="checkbox"/> 423 Withdrawal 28 USC 157
PROPERTY RIGHTS
<input type="checkbox"/> 820 Copyrights
<input checked="" type="checkbox"/> 830 Patent
<input type="checkbox"/> 840 Trademark
SOCIAL SECURITY
<input type="checkbox"/> 861 HIA (1395b)
<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 864 SSDI Title XVI
<input type="checkbox"/> 865 RSI (405(g))
FEDERAL TAX SUITS
<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | OTHER STATUTES
<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 950 Constitutionality of State Statutes |
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V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 USC § 271

Brief description of cause:

Patent Infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE PJS-RLE

DOCKET NUMBER 08-cv-06291

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/20/09

[Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____